

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

BYRON BLAKE, )  
vs. )  
Petitioner/Defendant, ) CIVIL NO. 09-555-GPM  
vs. ) CRIMINAL NO. 06-30146-01-GPM  
UNITED STATES OF AMERICA , )  
vs. )  
Respondent/Plaintiff. )

**MEMORANDUM AND ORDER**

**MURPHY, District Judge:**

On July 11, 2011, this Court entered a short order denying Petitioner Byron Blake's motion to vacate, set aside, or correct sentence. The Order, which was issued in response to a petition for writ of mandamus that Mr. Blake filed in the United States Court of Appeals for the Seventh Circuit, stated that written findings and judgment would follow. On July 22, 2011, Mr. Blake filed a notice of appeal and requested a certificate of appealability. The Court issued its written findings and entered judgment on September 26, 2011, and now considers Mr. Blake's request for a certificate of appealability.

Pursuant to 28 U.S.C. § 2253, a petitioner may not proceed on appeal without a certificate of appealability. Section 2253(c)(2) provides that a certificate of appealability may issue "only if the applicant has made a substantial showing of the denial of a constitutional right." Section 2253(c)(3) further provides that "[t]he certificate of appealability under paragraph (1) shall indicate which specific issue or issues satisfy the showing required by paragraph (2)." Because a petitioner may not proceed on appeal without a certificate of appealability issued by either this Court or the Court of

Appeals for the Seventh Circuit, the Court automatically construes a notice of appeal as a request for a certificate of appealability. *See* FED. R. APP. P. 22(b).

This Court carefully considered Mr. Blake's arguments and for the reasons thoroughly set forth in the September 26, 2011, Memorandum and Order (*see* Doc. 21), Mr. Blake has not made a substantial showing of the denial of a constitutional right. In fact, Mr. Blake states simply: "Petitioner is Asking this Honorable Court for 'Notice of Appeal' Notice of Appeal for Certificate of Appealability" (Doc. 17). Accordingly, the Court **DECLINES** to issue a certificate of appealability. Pursuant to Federal Rule of Appellate Procedure 22(b), Petitioner may present his request for a certificate of appealability to the Court of Appeals for the Seventh Circuit.

**IT IS SO ORDERED.**

DATED: 09/26/11

s/ G. Patrick Murphy  
G. PATRICK MURPHY  
United States District Judge